INDEX

Subject Index

	Page
Statement as to jurisdiction	1
The jurisdiction of the Supreme Court of the United States	2
The State statute the validity of which is involved	5
The date of the judgment sought to be reviewed	6

Table of Cases Cited

Concessions Co v Morris, 100 Wash 40, 170 Pac 055	4
Cudahy Co v Parramore, 263 U S 418	2
Dahnke Walker Co v Bondurant, 257 U S 282	2
Eureka Pipe Line Co v Hallanan, 257 U S 265	2
Fiske v Kansas, 274 U S 380	2
People v Mouse, 203 Cal 782, 265 Pac 944 (certiorari denied, 278 U S 644)	4
People of California v Standard Oil Co of California, 85 Calif Decisions, page 580, 22 P (2nd) 2	2
St Louis, etc, Ry Co v Wynne, 224 U S 354	2
Surplus Trading Co v Cook, 281 U S 647	4
United States v Cody, 58 F (2nd) 1013	4
United States v Uzzetta, 281 U S 138	4
United States v Watkins, 22 F (2nd) 437	4
Ward & Gow v Krinsky, 259 U S 503	2
Yellowstone Park Transp Co v Gallatin County, 31 F (2nd) 644 (certiorari denied, 280 U S 555)	4

Statutes Cited

Act of March 2, 1907 (Cal Stats 1907, p 51, c 50)	3
Act of January 31, 1928, c 14 (45 Stat 54, 28 U S C 861 (a))	2
Constitution of the United States, Article I, Section 8, Clause 3	3
Clause 12	4
Clause 14	4
Clause 18	4
California Motor Vehicle Fuel License Tax Act (Cal Stats 1923, p 571, chap 267, as amended by the Statutes of 1927, pp 1390, 1595)	1, 5
Judicial Code, Section 237 (a) (28 U S C 344 (a))	2

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 347

STANDARD OIL COMPANY OF CALIFORNIA, A CORPORATION, APPELLANT,

vs.

PEOPLE OF THE STATE OF CALIFORNIA, APPELLEE.

STATEMENT UNDER RULE 12.

This suit was originally brought in the Superior Court of the State of California, in and for the City and County of San Francisco, for $12.60 alleged to be due to the State as an excise tax under the provisions of the California Motor Vehicle Fuel License Tax Act (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1360, 1565) upon the sale of certain gasoline, made entirely *within* the territorial limits of the United States military reservation at the Presidio, San Francisco, California, by the defendant to the Presidio Post Exchange, a post exchange doing business under the regulations of the War Department of the United States.

The Superior Court gave judgment for the defendant. On appeal to the Supreme Court of the State of California, that court reversed the judgment of the Superior Court with directions to enter judgment for the plaintiff as

prayed. The opinion of the court has not yet been officially reported, but is printed in 85 California Decisions, page 559, and 22 P. (2d) 2.

1. The Jurisdiction of the Supreme Court of the United States.

The appellant submits that this Court has jurisdiction to review upon appeal the judgment of the Supreme Court of the State of California in this case under the provisions of subdivision (*a*) of Section 237 of the Judicial Code (28 U. S. C. Sec. 344 (*a*)), and Section 1 of the Act of January 31, 1928, c. 14 (45 Stat. 54; 28 U. S. C. Sec. 861*a*).

The case is one in which there is drawn in question the validity of the California Motor Vehicle Fuel License Tax Act, on the ground of its being repugnant to the Constitution of the United States, and in which the decision of the Supreme Court of the State of California is in favor of the validity of the statute.

More specifically, the appellant challenges on constitutional grounds the validity of the statute as the Supreme Court of California has applied it to the transaction involved in this case. It is settled that the unconstitutional application of a State statute to a particular transaction by the highest court of that State is a ground of review on appeal by the Supreme Court of the United States under the statutes quoted above.

Fiske v. *Kansas*, 274 U. S. 380, 385;

Cudahy Co. v. *Parramore*, 263 U. S. 418, 422;

Ward & Gow v. *Krinsky*, 259 U. S. 503, 510;

Dahnke-Walker Co. v. *Bondurant*, 257 U. S. 282, 288-290;

Eureka Pipe Line Co. v. *Hallanan*, 257 U. S. 265, 270-271;

St. Louis, etc., Ry. Co. v. *Wynne*, 224 U. S. 354, 359.

In applying the Motor Vehicle Fuel License Tax Act to the sale in question, the Supreme Court of California held that the State of California, having by legislative act* given to the United States exclusive jurisdiction over the territory known as the Presidio, for the establishment of a Federal military reservation, has the power thereafter to invade that territory by the imposition of a tax upon sales therein, without the sovereign's consent. The appellant contends that the imposition of such a tax by the State of California was an assumption of jurisdiction to tax in territory not within the State, and was an attempted regulation of commerce passing beyond the boundaries of the State in violation of the commerce clause of the Constitution of the United States (Const. Art. I, Sec. 8, cl. 3). The appellant contends also that the imposition of such a tax by the

*This was the Act of March 2, 1897 (Cal. Stats. 1897, p. 51, c. 56), which provided:

> "An Act ceding to the United States of America jurisdiction over all lands within this State which have been or may hereafter be acquired by the United States for military purposes.
>
> SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes; *provided*, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; *and provided further*, that this State reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully

State of California was an interference with a governmental function and governmental agency, in violation of clauses 12, 14 and 18 of Section 8, of Article I of the Constitution of the United States. In any event, the appellant contends that the statute, as construed by the Supreme Court of California to apply to a sale and delivery of gasoline from San Francisco to the Presidio Post Exchange, is a tax upon commerce within the exclusive jurisdiction of the Government of the United States.

These questions were raised in the Supreme Court of California in the briefs and in the petition for rehearing. In reversing the judgment of the superior court and directing judgment for the plaintiff, the Supreme Court of California directly decided in favor of the validity of the statute as against the contention that its application to the facts of the case was unconstitutional.

---

issue under the authority of this State against any person or persons charged with crimes committed without said lands."

A sufficient description by metes and bounds and a map and plat of the territory were filed as required in the office of the County Recorder of the City and County of San Francisco.

Construing this and similar acts, the courts have uniformly held that "exclusive jurisdiction" means just what the words say. See *United States* v. *Watkins*, 22 F. (2d) 437, fixing the status of the Presidio military reservation; and, with reference to similar acts: *United States* v. *Unzeuta*, 281 U. S. 138; *Surplus Trading Co.* v. *Cook*, 281 U. S. 647; *People* v. *Mouse*, 203 Cal. 782, 265 Pac. 944 (certiorari denied, 278 U. S. 614); *Concessions Co.* v. *Morris*, 109 Wash. 46, 186 Pac. 655; *Yellowstone Park Transp. Co.* v. *Gallatin County*, 31 F. (2d) 644 (certiorari denied, 280 U. S. 555); *United States* v. *Cordy*, 58 F. (2d) 1013.

2. The State Statute the Validity of Which is Involved.

The California Statute the validity of which is drawn in question by the judgment of the Supreme Court of the State of California from which this appeal is taken, is the California Motor Vehicle Fuel License Tax Act (Cal. Stats. 1923, p. 571, Chap. 267, as amended by the Statutes of 1927, pp. 1309, 1565). Section 3 of the Act, so far as material to this case, provides:

> "Every distributor shall from and after September 30, 1923, in addition to any other taxes provided by law, pay a license tax to the state controller of this state of two cents for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor in this state and sold and delivered by him in this state, or imported by such distributor into and distributed or sold by him in this state otherwise than in the original package or container in which such motor vehicle fuel was imported into this state, and for each gallon of motor vehicle fuel imported into this state and thereafter acquired by such distributor in the original package * * *."

Section 1 (*c*) defines "Distributor" as one who sells motor vehicle fuel "in this State."

Section 10, as amended by California Statutes of 1927, p. 1309, provides that the Act shall not apply "to any motor vehicle fuel sold to the Government of the United States or any department thereof for official use of said Government."

By the California Statutes of 1927, p. 1565, the tax was raised to three cents per gallon.

3. The Date of the Judgment Sought to be Reviewed.

The judgment of the Supreme Court of the State of California, which reversed the judgment of the superior court

and directed judgment to be entered for the plaintiff as prayed, was entered May 1, 1933. A petition for rehearing was denied May 29, 1933, and the judgment therefore became final May 31, 1933. (Rule 30, Sec. 1 of the Rules of the Supreme Court of the State of California.)

Dated July 17, 1933.

Respectfully submitted,

FELIX T. SMITH,
V. K. BUTLER, JR.,
Attorneys for Appellant.